

### **REMARKS**

In an Official Action dated November 29, 2011, the Examiner rejected claims 1-20 under §112 and under §103 as obvious in light of U.S. Pat. No. 3,696,710 to Ortelli in view of EP Pat. No. 1,319,836 to Caterpillar Inc. Applicant requests that the Examiner reconsider the rejections in light of the following.

#### **Claim Objections**

Applicants believe the amendments to the claims address the claim objections identified by the Examiner. Accordingly, Applicant requests that the Examiner reconsider the rejections to the claims under §112.

#### **§103 Rejection**

Ortelli '710 teaches a distributor for hydraulic motor that utilizes a commutator valve for alternatively connecting a flow path with high and low pressure manifolds. However, Ortelli '710 does not teach or suggest a valve member in the flow path operable to selectively isolate the associated work chamber. The Examiner attempts to fill the shortcoming of Ortelli '710 with Caterpillar '836. However, as discussed further below, the references teach against such a combination.

According to the Examiner, one of ordinary skill in the art would combine the valve of Caterpillar '836 with the commutator system of Ortelli '710 to allow the displacement of Ortelli's system to be incrementally controlled. Presumably this is referring to changing the output displacement described in ¶¶[0047]-[0049] of Caterpillar '836.

Caterpillar '836 discloses such "incremental" control by:

1) Selectively stopping piston(s) by holding the ball check valves 72 of the two assemblies in particular positions; or

- 2) Controlling the volume that each piston can produce, by allowing a portion of total volume to be pumped and bypassing the rest; or
- 3) Locking the piston in an inactive position at TDC.

Each of these control methods require control of the valving assemblies, of which the check valves 72 form an integral part (i.e. using one or both of the first valving assembly 64, and the second valving assembly 66).

Therefore the check valves 72 would perform the function of varying displacement without need of a commutating plate (the commutating plate in Ortelli specification is labeled 'rotary member 3',). In other words, Caterpillar '836 discloses a complete system for varying displacement. The commutating plate of Ortelli '710 would be superfluous in such a system because the system disclosed in Caterpillar would allow the variable displacement. Accordingly, if one of ordinary skill in the art chose to use the control system of Caterpillar '836 there would be no reason to combine it with the commutating plate of Ortelli '710.

Further still, the check valves used in Caterpillar '836 work in pairs. In fact, claim 1 of Caterpillar '836 indicates that they are essential since it requires at least two valving assemblies. Use of a single check valve as suggested by the Examiner would not work to provide the control taught in Caterpillar '836. For this additional reason, one of ordinary skill would not combine Caterpillar '836 with Ortelli '710 as suggested by the Examiner.

Additionally, the check valves in Caterpillar are configured to work with pistons that are held at a predetermined position, i.e. stopping pistons. This is not relevant to the system recited in Applicant's claims.

In short, the system in Caterpillar '836 provides an alternate control system to the

one disclosed in Ortelli '710. There is no teaching or suggestion of why or how one of ordinary skill in the art would pick and choose features from Caterpillar '836 and combine the selected pieces with elements of Ortelli '710. The only motivation to make the proposed combination is from using Applicant's disclosure as a road map to find pieces in the prior art and combine them without any regard to the teaching or the references. Such hindsight reconstruction is clearly inappropriate. Accordingly, Applicant requests that the Examiner reconsider the rejection of the pending claims over the prior art of record.

In light of the foregoing, Applicant believes that the application is in form for allowance. If the Examiner believes that any issues remain regarding the allowability of the application, the Examiner is encouraged to contact Applicant's undersigned attorney by telephone to resolve the remaining issues.

Respectfully submitted,

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